



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

W Tayloe Murphy, Jr.  
Secretary of Natural Resources

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Director

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Tidewater Regional Director  
(757) 518-2000

### **VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO**

**Mid-Atlantic Regional Maintenance Center  
Federal Agency for the US Navy**

#### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§10.1-1182 *et seq.*, 10.1-1402, 10.1-1405, and 10.1-1455 between the Virginia Waste Management Board and the Mid-Atlantic Regional Maintenance Center, for the purpose of resolving certain violations of environmental law and regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1401 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "MARMC" means the federal agency Mid-Atlantic Regional Maintenance Center with the listed address 9170 Second Street, Suite 120, Norfolk, VA 23511-2393, formerly known as "SUPSHIP", the federal agency Supervisor of Shipbuilding - Portsmouth, with the listed address of P.O. Box 215, Portsmouth, VA 23705.

6. "Order" means this document, also known as a Consent Order.
7. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
8. "EPA" means the United States Environmental Protection Agency, with the headquarter office located at 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
9. "Regulations" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60- *et seq.* ("VHWMR"). The specific provisions of Title 40 of the Code of Federal Regulations ("CFR") cited herein are incorporated by reference at 9 VAC 20-60-261 and 9 VAC 20-60-262.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. The MARMC is a government agency that develops, awards, and administers contracts with private firms to accomplish naval ship repair work.
2. The MARMC was responsible for planning repairs, entering into a repair contract, surveillance of the contract for repairs, and ultimately overseeing the completion of repairs for the naval ship USS Mount Whitney (LCC 20). The repairs were accomplished while the vessel was located at the Norfolk Naval Base, Pier 11, in June and July 2003.
3. The MARMC contracted QED Systems, Inc. to accomplish the repairs to the USS Mount Whitney while located at the Norfolk Naval Base, Pier 11, in June and July 2003. The repairs were accomplished under indefinite delivery, indefinite quantities contract #N62678-02-D-2003, Task Order 0008.
4. The MARMC reports that the only hazardous waste anticipated to be generated during performance of repairs to the USS Mount Whitney, while located at the Norfolk Naval Base, Pier 11, in June and July 2003, was approximately one pound of paint.
5. The repair work on the USS Mount Whitney included pipe replacement in sealed fresh water ballast tank #9-86-5-W. The water in the ballast tank had to be removed for repair access.
6. Reportedly, under terms of a contract with the MARMC, QED Systems, Inc. was to remove the ballast water and dispose of it. The MARMC maintains that QED Systems, Inc. was also contractually responsible to test material being disposed to determine if the material was hazardous and if so manage such hazardous waste in accordance with applicable laws and regulations. QED Systems, Inc. subcontracted Marpol, Inc. for portions of the repairs involving removal and disposal of the ballast water.
7. The MARMC maintains that on June 27, 2003, Marpol, Inc. drew a sample of water from ballast tank #9-86-5-W. The MARMC maintains that neither QED

nor Marpol sent a sample of the ballast water to a certified laboratory for analysis prior to transporting the hazardous waste water as required by the contract.

8. On July 1, 2003, 2,000 gallons of ballast water was pumped from tank #9-86-5-W and transported under a non-hazardous waste manifest for disposal. Marpol, Inc. received the ballast water as non-hazardous waste for disposal as wastewater. Marpol, Inc. is a wastewater pre-treatment facility permitted in accordance with Clean Water Act requirements, which discharges to the Hampton Roads Sanitation District system. Marpol also has an EPA identification number, VAD988211884.
9. On July 16, 2003 Marpol, Inc. reportedly submitted a retained sample of the ballast water, drawn from tank #9-86-5-W on June 27, 2003, for laboratory analysis of total chromium and hexavalent chromium. Test results indicated the presence of dissolved chromium III at 296 mg/l and hexavalent chromium at 880 mg/l in the ballast water. Both constituents are above the 5.0 mg/l toxicity characteristics level for chromium as a hazardous waste as contained in 40 CFR 261.24(a).
10. 40 CFR 262.11 provides that the generator of a solid waste must determine if that waste is a hazardous waste. Apparently, neither the MARMC, QED Systems, Inc. nor Marpol, Inc. determined that the ballast water from tank #9-86-5-W was a hazardous waste prior to transport. The MARMC acknowledges that it is a generator of the hazardous waste prior to transport. DEQ alleges that the MARMC violated 40 CFR 262.11 by failing to determine if the ballast water in the USS Mount Whitney tank #9-86-5-W was a hazardous waste.
11. 40 CFR 262.12(a) provides that the generator of a solid waste must not treat, store, dispose of, or offer for transportation hazardous waste without having received an EPA identification number. The MARMC as the generator of hazardous wastes is required to obtain an EPA identification number. The MARMC did not have an EPA identification number for waste generated from the USS Mount Whitney at the time the ballast water was removed. The MARMC maintains that the Norfolk Naval Base EPA identification number was expected to cover any hazardous waste generated from the USS Mount Whitney while located at Norfolk Naval Base, Pier 11, in June and July 2003. DEQ alleges that the MARMC violated 40 CFR 262.12(a) by offering for transport the hazardous waste in the USS Mount Whitney ballast waster tank #9-86-5-W without obtaining an EPA identification number.
12. 40 CFR 262.20(a) provides that a generator who transports, or offers for transportation, hazardous waste for offsite treatment, storage or disposal must prepare a manifest on forms approved by the federal government for hazardous waste. A non-hazardous waste manifest was used for the transported ballast water from the USS Mount Whitney tank #9-86-5-W. The ballast water was subsequently determined to be a hazardous waste, as noted in paragraph 9, above. DEQ alleges that the MARMC violated 40 CFR 262.20(a) by offering for transport the hazardous waste in the USS Mount Whitney ballast water tank #9-86-5-W on a non-hazardous waste manifest.

13. DEQ issued SUPSHIP a Notice of Violation on January 9, 2004 advising of the above listed failures of hazardous waste determination, identification, manifest, and applicable regulatory requirements.

#### **SECTION D: Agreement and Order**

1. Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1455, orders the MARMC, and the MARMC voluntarily agrees, to pay a civil charge of \$9,000.00 within 30 days of the effective date of this Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia," shall indicate the MARMC's Federal Identification Number, and shall be sent to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

2. The MARMC agrees to provide DEQ within 60 days of the effective date of this Order, a corrective action plan addressing the MARMC procedures used to identify, manage and dispose of hazardous waste. The MARMC plan shall reasonably be expected to provide procedures used to identify, manage and dispose of hazardous waste in a manner that can be approved by DEQ.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of the MARMC for good cause shown by the MARMC, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to the MARMC by DEQ on January 9, 2004. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order only, the MARMC admits the jurisdictional allegations in the Order but does not admit the factual allegations or legal conclusions contained herein.
4. The MARMC declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review

of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

5. Failure by the MARMC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
7. The MARMC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. The MARMC shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The MARMC shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

8. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
9. This Order shall become effective upon execution by both the Director or his designee and the MARMC. Notwithstanding the foregoing, the MARMC agrees to be bound by any compliance date which precedes the effective date of this Order.
10. In accordance with the Federal Anti-Deficiency Act, the obligations of the Navy under this section are expressly conditioned on the availability of Congressional appropriations, which the MARMC agrees to seek in amounts sufficient to timely

accomplish these undertakings. If sufficient appropriations are not available and cannot be obtained, the MARMC will promptly inform the TRO of DEQ. In such case, the Director may terminate the Order and take other action, if so desired, or amend the Order with the MARMC's consent.

11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to the MARMC. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the MARMC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, the MARMC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of April, 2005.

Francis L. Daniel  
Francis L. Daniel, Regional Director  
for Robert G. Burnley, Director  
Department of Environmental Quality

The MARMC voluntarily agrees to the issuance of this Order.

By: Larry Olsen

Date: 7 APRIL 2005

Commonwealth of Virginia

City/County of Norfolk

The foregoing document was signed and acknowledged before me this 7 day of April, 2005, by Larry Olsen, who is  
(month) (name)

Commander of the MARMC, on behalf of the MARMC.  
(title)

Michelle J. Gordon  
Notary Public

My commission expires: Oct. 31, 2006